

**Approved 6/9/10**

**TOWN OF CUSHING  
PLANNING BOARD  
Minutes of Meeting  
June 3, 2009**

**Board Present:** Chairman Dan Remian, David Cobey, Bob Ellis, Evelyn Kalloch, Frank Muddle, CEO Scott Bickford

**Absent:** None

**1.Call to Order:** Chairman Remian called the meeting to order at 6:35 P.M. and a roll call was taken.

**2. Approve Minutes of 5/8/09:**

**ACTION:** Mr. Muddle made a motion, seconded by Mr. Ellis, to approve the minutes of the 5/8/09 meeting.  
Carried 4-0-0 (Mr. Cobey had not yet arrived)

**3. New Business:**

**a. Application for Subdivision Amendment to Remove a the Well Circle Restriction from Gaunt Neck Lot 9-1, Map 6, Owned by James and Deborah O'Leary:** CEO Bickford confirmed that the fee for this application had been paid. Mrs. Kalloch said that on Page 3 Mr. Palm indicated there was no such entity as Meduncook Bay Colony, but she noted that Mr. Tower had used that title when advertising his developments.

Jim O'Leary represented the application before the Board. He introduced his wife, his builder, and his architect. (Mr. Cobey arrived at this time.) Mr. Bickford explained that there were two agenda items to be considered: 1) a subdivision amendment, for which the test pit and well restriction circle had been provided on a drawing, and 2) circumstances that come into play assuming the circle has been removed. He said the plan was bland because its purpose was only to remove the circle. Mrs. Kalloch said there had evidently been no objection to the proposed change by Machias Savings Bank or the HOA. Mr. Cobey said he saw no application for the subdivision amendment and the CEO said there was not one, but Board members would sign the plan if it were approved. Mr. Cobey said it would be a good idea to have an application for future cases.

**ACTION:** Mr. Cobey made a motion, seconded by Mr. Muddle, that the Board not require a formal application for this decision.  
Carried 5-0-0

**ACTION:** Mr. Cobey made a motion, seconded by Mr. Ellis, that the well restriction circle be removed from Lot #1, and only Lot #1, in Gaunt Neck Subdivision.  
Carried 5-0-0

**ACTION:** Mr. Remian made a motion, seconded by Mr. Ellis, that the Planning Board did not have to address the requirements of review.  
Carried 5-0-0

Mr. Ellis read into the record that "The scope of review shall be limited to those portions of the plan that are proposed to be changed, except when the design or construction of an existing subdivision road does not meet the standards of this regulation." He concluded by saying the scope of this review was relevant only to the well restriction circle.

There was a brief discussion of well restrictions, their purpose and the problems they could cause.

**b.Application for a Land Use Permit for a Structure on Lot 9-1, Map 6, Owned by James and Deborah O'Leary. Proposed Structure to be Placed in a Limited Residential/Resource Protection Area of Shoreland Zone:** Mr. Cobey asked if the setbacks shown on the plan had been established by a previous action of the Board or the HOA. Mr. O'Leary said they were in the covenants. Mr. Cobey also asked Mr. O'Leary to explain the difference between the two site plans submitted. The O'Leary's designer explained that the small building footprint

was on a steep slope and he had only recently learned of the Resource Protection restrictions. The surveyor's plan showed the footprint of the house and the designer's plan showed the intent of the positioning of the building footprint. He said his design had tried to minimize impact on the site and discussed the issues of accessing the house and parking. He showed a photograph to illustrate where the house would be located, also showing the area of 20% grade. He said they had tried to keep a tight footprint toward the back of the property, maintaining as much of the natural quality of the site as possible. He asked the Board to keep in mind the balance they were trying to achieve.

Mr. Cobey asked who had done the slope analysis. The designer said Landmark Surveying had provided it. Mr. Ellis noted that the slope area ended exactly on the originally proposed driveway area, which the house bisected, and asked if that was accurate. Mr. Bickford said he had looked at the overlay and felt this drawing was accurate. Mr. Remian asked why the driveway area was so large and the designer said the intent was to have a planting buffer between the driveway and the house. He said the O'Learys also wanted a small garage on the western side of the property and needed turning room for deliveries and emergency vehicles.

Mr. Ellis said the Board needed to address the issue on Page 15 (Land Use Table) that indicated there could be no residential structures in RP. Mr. Cobey said this proposed building was not in RP because the area of 20% slope was less than two acres; he said there was no RP on the site. Mr. Remian countered that the area was more than 2 acres because it extended into the adjoining lot. Mr. Cobey said review would necessitate showing grades out to the west property line in order to determine if the 20% slopes stopped at that line. Mr. Ellis said he would like to see the town's depiction of RP in this area

Mr. Cobey asked the designer why he wanted to move the septic and was told there was a great deal of ledge in the northwest corner, where the septic had been proposed. The designer said the newly proposed location would provide a better fit into the landscape because it would grade in more smoothly; they had also wanted to put it as far below the house as possible to minimize pumping. Mr. Cobey asked some questions related to the location of the tree line, in order to determine how much vegetation would be removed. The designer acknowledged that some trees would be affected by grading.

The Board determined by the town map that the building footprint was not in RP. Mr. Cobey said that without a specific well location there was no way the Board could act on this application tonight. The Board discussed proposed well and septic locations on abutting properties, since the O'Learys' entire septic system would have to be 100' from any wells. The designer marked well and septic locations on the plan.

The Chairman started the review of the Land Use Standards of the Shoreland Zone Regulations (11/14/07).

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Remian, that Section 15(A) conformed to the Land Use Standards and had been established at the time of subdivision approval.  
Carried 5-0-0

Mr. Cobey ascertained that the coverage of the footprint and driveway, limited to 20% of the lot, had not been calculated. Board members did the calculation and determined that the coverage met the regulations.

**ACTION:** Mr. Remian made a motion, seconded by Mr. Ellis, that the standards of Section 15(B) were met.  
Carried 5-0-0

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Cobey, that Section 15(C, D & E) did not apply.  
Carried 5-0-0

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Cobey, that Section 15(F) complied.  
Carried 5-0-0

**ACTION:** Mr. Cobey made a motion, seconded by Mr. Muddle, that the application complied with Section 15(G).  
Carried 5-0-0

Mr. Cobey said the presented drawing showed a fairly deep swale through the parking area while he thought it might be possible to sheet drainage across it, eliminating the need for a swale. He also said he was concerned that

the drainage swale on the north side of the house would require cutting trees and suggested it could be much closer to the house.

**ACTION:** Mr. Remian made a motion, seconded by Mr. Ellis, that Section 15(H) did not apply.  
Carried 5-0-0

Mr. Bickford said he thought the storm water should be looked at during development due to the slopes, aiming for runoff to be through sheet flow rather than channels.

**ACTION:** Mr. Cobey made a motion, seconded by Mr. Remian, that the application conformed to the requirements of Section 15(I).  
Carried 5-0-0

The Board determined that the building designated as a 1-bedroom guest quarters would actually be a garage with no living space and this was noted on the plan.

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Cobey, that the application conformed to the requirements of Section 15(J).  
Carried 5-0-0

**ACTION:** Mr. Remian made a motion, seconded by Mr. Ellis, that Section 15(K, L, M, and N) did not apply.  
Carried 5-0-0

The Chairman asked the CEO if he was satisfied that the proposed work boundary would be the limit of disturbance. Mr. Bickford said he had not done any related calculations and was not familiar enough with the site to make that determination on the spot. Mr. Cobey noted that there would be virtually no clearing within 75', meaning that the 250 Sq. Ft. would not be exceeded.

**ACTION:** Mr. Remian made a motion, seconded by Mrs. Kalloch, that the application conformed to Section 15(O).  
Carried 5-0-0

**ACTION:** Mr. Muddle made a motion, seconded by Mrs. Kalloch, that the requirements of Section 15(P) had been met by the application.  
Carried 5-0-0

**ACTION:** Mr. Cobey made a motion, seconded by Mrs. Kalloch, that Section 15(Q) was not relevant to this application.  
Carried 5-0-0

**ACTION:** Mr. Cobey made a motion, seconded by Mr. Remian, that Section 15(R) was satisfied by the application.  
Carried 5-0-0

**ACTION:** Mr. Remian made a motion, seconded by Mrs. Kalloch, that Section 15(S & T) did not apply.  
Carried 5-0-0

**ACTION:** Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact, based on the information presented, that Section 16(E) (a through i) complied.  
Carried 5-0-0

Chairman Remian declared the application approved.

**c. Development Performance Guarantee:** Mr. Cobey suggested recommending to the Selectmen that the town require a performance guarantee from corporate developers. Mr. Muddle confirmed that this would relate only to development corporations, not to individual developers. Mr. Cobey said what he had proposed was an escrow amount that was not refunded until a project was completed. The purpose was to protect the town against damages and non-payment of fines.

**ACTION:** Mr. Ellis made a motion, seconded by Mr. Cobey, to send this recommendation to the Selectmen for review.  
Carried 5-0-0

**4. Old Business:** Mr. Ellis asked if Eric Anderson's concerns could be addressed before voting took place. He felt that tweaking some definitions would make it clear that making things in the SZ was allowed. Mr. Cobey asked if the Board wanted to restrict it to the manufacture of marine items. Mr. Ellis did not like this idea and said it should allow anything to be made as long as it did not come under the definition of commercial or industrial. Mr. Cobey asserted this should come under a home business. The Board decided it would have to refine its definitions. Mr. Bickford said all ordinances were fluid documents that should be periodically reviewed and suggested this one could be addressed next year.

Mr. Remian said the town had voted to have a Flood Plain Ordinance, but a technicality had kept it from being implemented. Fire Chief Kiskila had asked the PB to look into it. Mr. Ellis said the technicalities had been addressed and the town had voted to adopt the Federal standards. However, Mr. Cobey said, it had not been determined who would administer the ordinance. Mr. Remian said he would look into it further. The CEO gave some explanation of what was involved in administering the Federal flood plain regulations.

The CEO asked the Board's opinion on a property where the owner wanted to remove some of the 30% expansion approved 10 years ago. The owner then wanted to rebuild smaller than what had been allowed. Mr. Bickford provided drawings. He said it was within the 75', would not be closer to the water and would be less non-conforming. Members asked some questions and decided there was no problem with the plan and it could be handled by the CEO.

**5. Adjournment:**

**ACTION:** Mr. Muddle made a motion to adjourn at approximately 8:15 P.M.  
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey  
Recording Secretary  
(Transcribed from the digital recording)